

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460**

DEC 12, 1986

Mr. Eliot Cooper  
Director of Environmental Affairs  
Waste-Tech Services, Inc.  
18400 W. 10th Avenue  
Golden, CO 80401

Dear Mr. Cooper:

Thank you for your letter of November 17, 1986, in which you request clarification of the regulatory status of spent fluidized bed media used during the destruction of listed hazardous waste as well as clarification of facility changes allowed under interim status.

Under the RCRA regulations, spent fluidized bed media would not be considered to be a hazardous waste via application of 40 CFR 261.3(d) since the spent media would not be considered to have been derived from the treatment of a hazardous waste. In addition, the mixture rule in 40 CFR 261.3(a)(2)(iv) does not apply since the fluidized bed media is not a solid waste at the time it becomes mixed with a hazardous waste. Nevertheless, spent fluidized bed media contaminated with a listed hazardous waste (or, in this case, a waste derived from a listed hazardous waste) would still be subject to regulation since it contains a hazardous waste. See 261.3(c)(1) and (d)(2). Therefore, the treatment, storage, or disposal of spent -fluidized bed media contaminated with hazardous waste must be handled as if the fluidized bed media itself were a hazardous waste. However, if the fluidized bed media, as a result of the incineration process or as result of other treatment, no longer contains a hazardous waste, it would no longer be subject to regulation under Subtitle C of RCRA. In this case, no delisting petition would be required.

Your second question concerns whether an interim status facility may add a new incinerator if the facility currently does not have an incineration process. The answer is yes, provided that the conditions specified in 40 CFR 270.72 are met. Under §270.72(c), owners or operators wishing to make any changes in or additions to the processes of treatment, storage, or disposal at an interim status facility are required to submit a revised Part A and a justification for the change to the regulating agency for approval. EPA or an authorized State may approve these

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changes only when they are necessary to prevent a threat to human health and the environment due to an emergency situation, or when they are necessary to comply with Federal regulations (including the interim status standards of 40 CFR Part 265) or State or local laws.

This provision does not preclude the addition of a completely new process (e.g., incineration) at an interim status facility that currently does not have such a process.

It should be noted, however, that §270.72 (e) limits the scope of any changes that take place at interim status facilities by prohibiting changes that require a capital expenditure greater than 50% of capital cost for the construction of a comparable entirely new hazardous waste management facility. Therefore, this provision (known as the “reconstruction” limit) may restrict the extent of a change even if the addition of a new process is allowed under §270.72(c).

The above response to your two questions describes the operation of the Federal RCRA program for the situations you outlined in your letter. However, 42 States now have final authorization to operate the RCRA program in lieu of EPA. Some State requirements may be more stringent or more restrictive than the Federal program in these two areas. If you have specific concerns regarding your operation in Colorado, I recommend that you contact Mary Gearhart in the Colorado Department of Health (303-331-4830) since the State has RCRA authorization.

If you have any further questions on the Federal RCRA requirements, please feel free to contact Larry Wapensky in EPA’s Region VIII office in Denver (303-293-1660).

Sincerely,

Marcia E. Williams  
Director  
Office of Solid Waste

cc: Larry Wapensky, EPA Region VIII  
Mary Gearhart, Colorado Department of Health